

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 1606 OF 1999
in

SPECIAL CIVIL APPLICATION No 3846 of 1999

with
CIVIL APPLICATION NO, 13403 OF 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MF SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR MUKUL SINHA for Appellant

M/S PATEL ADVOCATES for Respondent No. 1

Mr Gharania, Asstt.GOVERNMENT PLEADER for Respondent No. 2

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE D.P.BUCH

Date of decision: 27/12/1999

ORAL JUDGEMENT

This appeal is filed against the order passed in SCA No. 3846 of 1999 by the learned Single Judge on October 5,

1999 and order passed in MCA No. 2361 of 1999 in SCA No.3846 of 1999 on November 2, 1999.

Appellant was the original petitioner. He filed the said petition for the reliefs prayed for in para 8 of the petition with which we are not concerned in the present appeal.

It appears that on September 28, 1999, the petition was placed for hearing. It also appears that on that day, the petitioner wanted to challenge the validity of certain rules . A prayer was,therefore,made for adjournment and the learned Single Judge passed the following order :

"Learned counsel for the petitioner states that in order to get the substantive relief claimed by him, the petitioner will have to challenge in alternate, the validity of rule itself for which he seeks time to make necessary application for amending the petition. S.O. to 5th October 1999, as prayed."

Thus, the Court was conscious of the fact that the petitioner wanted to make amendment and the matter was adjourned to 5th October 1999. On 5th October 1999, according to the learned counsel for the petitioner, draft amendment was submitted which is at page 49 of the present proceedings. Learned Single Judge, on that day, however,dismissed the petition by discharging notice and vacating interim relief. The appellant, therefore, filed MCA No. 2361 of 1999 which is also part of the present proceedings. In para 4, the following prayer was made :

"4. The applicant prays as under :

(A) Your Lordships may be pleased to review order dated 5.10.1999 passed in Spl.C.A. No. 3846/99 to the effect that the said draft amendment was granted by the Honourable court and incorporate this fact into the said order in the interest of justice.

(B) Your Lordships may be pleased to grant any other relief as is deemed fit and necessary in the interest of justice."

Learned Single Judge vide an order dated November 2, 1999 rejected the said application also by passing the following order :

"By this MCA, learned counsel for the petitioners wants under that an order for allowing amendment in the petition be made. In all application, which is stated to have been made on 5.10.1999. As no order appears to the effect in the record of the proceedings and the petition stands disposed of no order can now be made to amend proceedings at this stage. Application rejected."

When the matter came up for hearing, we issued notice for admission as well as final hearing and made it returnable on December 22, 1999. Today, we have heard the parties.

Mr. Sinha for the appellant contended that on September 28, 1999, a prayer was made on behalf of the appellant-petitioner that he wanted to challenge validity of the rules and hence wanted to make amendment. The Court, acceded to the request made by the learned counsel for the appellant and adjourned the matter to October 5, 1999. On 5th October, draft amendment, was submitted, but the petition was dismissed without referring to amendment. He, therefore, filed a review petition to recall the order and to grant amendment. On November 2, 1999, the said application was also rejected. Mr. Sinha, therefore, submitted that this is a fit case in which amendment deserves to be granted and the matter deserves to be remanded to the learned Single Judge for disposal in accordance with law.

Mr. Gharania, learned AGP, however, stated that amendment was granted and the petitioner cannot have any grievance against such action.

Obviously, there is nothing to show that the application for amendment was allowed. Even in the order, it is not stated that amendment was granted. Precise grievance of the appellant before us is also that though the application was submitted on September 28, 1999 and the matter was kept on October 5, 1999, amendment was not granted.

In the facts and circumstances of the case, LPA deserves to be allowed and is accordingly allowed. The matter

will now be placed before the learned Single Judge who will decide the same in accordance with law. Both the orders passed by the learned Single Judge on October 5, 1999 and November 2, 1999 are set aside. We may state that we are not expressing any opinion on the merits of the matter and as and when the matter will be placed for hearing, it is open to both the parties to raise all contentions available to them in law. LPA is allowed. No order as to costs. No order on civil application.

parekh